

STATE OF MICHIGAN
COURT OF APPEALS

DANETTA LYNESE SIMPSON,

Plaintiff-Appellant,

V

JP MORGAN CHASE BANK, N.A. and OCWEN
LOAN SERVICING, L.L.C.,

Defendants-Appellees.

UNPUBLISHED

September 30, 2010

No. 292955

Wayne Circuit Court

LC No. 09-006829-CK

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

Plaintiff appeals by right a circuit court order granting defendants' motion for summary disposition based on *res judicata*. The court determined that a prior district court action brought by defendant JP Morgan Chase Bank ("Chase Bank") against plaintiff for the recovery of land barred plaintiff's claims in the present case. We affirm in part, reverse in part, and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's decision on a motion for summary disposition *de novo*. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Defendants moved for summary disposition under MCR 2.116(C)(8) and (10). The circuit court did not specify the subrule on which it relied to grant defendants' motion. But because the court's decision to grant summary disposition was based on its consideration of evidence outside the pleadings, the decision is appropriately reviewed under MCR 2.116(C)(10), which permits summary disposition when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Maiden*, 461 Mich at 120.

"Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical." *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 817 (1999). The doctrine applies where the first action was decided on the merits; the matter contested in the second action was or could have been resolved in the first, and both actions involve the same parties or their privies. *Id.* "Michigan courts have broadly applied the doctrine of *res judicata*. They have barred, not only claims already litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Id.*

The doctrine of *res judicata* applies differently where the first action is a summary proceeding for eviction. MCL 600.5750 states, in relevant part:

The remedy provided by summary proceedings is in addition to, and not exclusive of, other remedies, either legal, equitable or statutory. A judgment for possession under this chapter does not merge or bar any other claim for relief, except [with regard to certain exceptions that are not pertinent in this case.]

Thus, a “judgment in [] summary proceedings, no matter who prevails, does not bar other claims for relief.” *JAM Corp v AARO Disposal, Inc*, 461 Mich 161, 170; 600 NW2d 617 (1999). But as explained in *Sewell v Clean Cut Mgt*, 463 Mich 569, 576; 621 NW2d 222 (2001), “the ‘other claims of relief,’ described in *JAM Corp* at 170, were those claims that ‘could have been’ brought during the summary proceedings, but were not. This Court was not describing subsequent claims involving the issues *actually litigated* in the summary proceedings.” (Emphasis added.)

Here, the circuit court properly determined that res judicata barred counts III and V of plaintiff’s complaint. Count III is a claim to set aside the prior sheriff’s sale. Plaintiff alleged that the sheriff’s sale was illegal, void, or voidable because defendants refused to accept her mortgage payments in violation of a forbearance agreement. The district court’s judgment in the prior summary proceeding is conclusive of defendants’ right of possession. Thus, res judicata bars relitigation of the validity of the sheriff’s sale on which defendant’s right of possession was premised. Count V of plaintiff’s complaint is a claim for injunctive relief, but plaintiff seeks this relief only in conjunction with her count III to set aside the sheriff’s sale. Because count III was properly dismissed and plaintiff does not offer any argument that would allow her claim for injunctive relief to proceed in the absence of count III, we also affirm the dismissal of count V.

We also conclude that the circuit court properly dismissed plaintiff’s breach of contract claim in count I. The record of the district court proceeding, and even the allegations of plaintiff’s complaint, indicate that plaintiff asserted defendants’ alleged breach of the forbearance agreement as a defense to Chase Bank’s action to recover possession of the land. The district court repeatedly adjourned the proceedings to allow plaintiff to develop the facts to support her alleged defense. The district court ultimately ruled in favor of Chase Bank and issued a judgment awarding it possession of the disputed premises, thereby indicating that the court rejected plaintiff’s proffered defense based on an alleged breach of the forbearance agreement. That ruling bars plaintiff’s attempt to relitigate her breach of contract claim in the present action.

But, we conclude that the circuit court erred in concluding that res judicata barred plaintiff’s claims for “innocent misrepresentation” (count II) and violation of the Michigan Regulation of Collection Practices Act, MCL 445.251 *et seq.* (count IV). Plaintiff alleged that defendants made misrepresentations regarding the forbearance agreement that deceived her, that she relied on the misrepresentations, and that she suffered injury because the misrepresentations led to the foreclosure and sale of her home at a sheriff’s sale. Plaintiff did not articulate a claim of innocent misrepresentation in the district court proceedings, and a determination that defendants made misrepresentations about the forbearance agreement would not conflict with the district court’s judgment awarding possession of the premises to Chase Bank. Because plaintiff’s claim that defendants made misrepresentations about the forbearance agreement was not actually litigated in the district court summary proceedings, defendants were not entitled to dismissal of that claim on the basis of res judicata. *Sewell*, 463 Mich at 576.

Similarly, in count IV, plaintiff alleged that defendants were debt collectors within the meaning of the Michigan Regulation of Collection Practices Act, and that they made false, deceptive, and misleading statements “regarding the character, amount or legal status of [her] debt” in connection with the mortgage and forbearance agreement, contrary to the Consumer Mortgage Protection Act, MCL 445.1631 *et seq.* Plaintiff alleged that she was entitled to actual and statutory damages under MCL 445.257. There is no indication that these alleged statutory violations were raised in the district court proceedings, and a determination that defendants violated the alleged statutes would not conflict with the district court’s judgment awarding possession of the premises to Chase Bank. Because these statutory claims were not actually litigated in the district court summary proceedings, they too were not barred by res judicata. *Sewell*, 463 Mich at 576.

In sum, we affirm the circuit court’s dismissal of count I (breach of contract), count III (set aside sheriff’s sale), and count V (injunctive relief), on the basis that these claims are barred by res judicata, but reverse the circuit court’s dismissal of count II (innocent misrepresentation) and count IV (statutory violations).

We affirm in part, reverse in part, and remand for further proceedings. We do not retain jurisdiction. Neither party have prevailed in full, no taxable costs are awarded. MCR 7.219.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Jane M. Beckering